

M. CUNNINGHAM.

MAY 25, 1842.

Read, and laid upon the table.

Mr. COWEN, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of M. Cunningham, report:

That this is a claim for money alleged to have been paid for labor, light-
erage, and wharfage, and for demurrage at the port of Charleston, in 1841,
in landing and unloading a cargo transported to that port for the United
States by the petitioner. The transportation was performed and the ex-
penses and demurrage alleged to have been incurred under a contract, of
which the following is a copy:

"This agreement, made in Baltimore, Maryland, on the 11th day of
May, 1841, between Captain S. B. Dusenberry, assistant quartermaster
United States army, of the one part, and M. Cunningham, owner of the
brig F. Street, on the other part, witnesseth, that the said M. Cunningham,
on his part, is to provide the brig F. Street, being properly officered,
manned, and equipped, for a voyage to Charleston, South Carolina, with
suitable tackle for lowering into and raising from her hold a weight of five
tons, and to start her forthwith to the Washington arsenal, on the Potomac
river, and there take on board the following articles of United States ord-
nance, and transport the same and safely land them at Fort Moultrie and
Castle Pinkney, in the harbor of Charleston, South Carolina, the dan-
gers of the seas and navigation excepted, as designated below, viz :

Number of boxes.	Remarks.	Total contents.	Weight.
		14 32-pounders, iron guns	105,308 lbs.
		5 8-inch sea coast howitzers	29,300
		14 32-pound castelle carriages	52,360
1	W. L. Paule	14 32-pound rammers and staves	210
2	M. S. K.	14 32-pound sponges and staves	228
3	Charleston, S. C.	7 32-pound worms and staves	252
	For Fort Moultrie	7 32-pound ladles and staves	
		14 port-fire stocks	
		14 lintstocks	116
		14 lead aprons and straps	
		19 tompons	

ARTICLES—Continued.

Number of boxes.	Remarks.	Total contents.	Weight.
		4 42-pounders, iron guns -	34,464 lbs.
		6 24-pounders, " " -	33,540
		2 8-inch sea coast howitzers -	11,720
		6 24-pound barbette carriages	17,472
		6 24-p'nd rammers and staves }	182
1	W. L. Poole }	6 24-p'nd sponges and staves }	
	R. S. R. }	6 24-pound ladles and staves }	105
2	Charleston, S. C. }	3 24-pound worms and staves }	
		6 linstocks }	
3	Castle Pinkney }	6 port-fire stocks }	97
		6 lead apron straps }	
		12 tompons }	

"And Captain S. B. Dusenberry agrees, on the part of the United States, that every facility shall be furnished for loading and unloading the vessel, and, if necessary, laborers shall be employed to assist the crew for that purpose. For the faithful performance of this agreement, on the part of the said Cunningham, Captain S. B. Dusenberry agrees, on the part of the United States, to pay him one thousand dollars on the certificate of the assistant quartermaster United States army, Charleston, South Carolina, that the articles herein enumerated have been landed at the places designated. The captain of the F. Street, on her arrival at the Washington arsenal, is immediately to report to Captain A. R. Hazel, a quartermaster in Washington. In testimony of which we have hereunto set our hands and seal the day and year above written.

"S. B. DUSENBERRY,
Assistant quartermaster United States army.

"M. CUNNINGHAM."

By a letter from the Fourth Auditor, the committee understand that the charges for payments for wharfage and labor will be allowed and paid on presentation at that office.

The question, as to the claim for lighterage and demurrage, is for the consideration of the House. The committee are informed by the Second Comptroller and Third Auditor that, as they construe the contract, they cannot allow the claims for lighterage and demurrage. The amount of this claim is not large; but the construction of the contract should be as carefully considered, and determined by the same rules that should govern it, if thousands depend upon it. The committee consider it important that Congress should not, upon questions of this kind, overrule the practice of executive departments without good reason. Contracts are to be considered with reference to the usages of those acquainted with the subject of the contract. There may be many similar contracts unclosed: there may have been many more closed and settled. The usages of the

accounting officers have controlled those settlements. The expectations of the agents of the Government, in making the contracts, were regulated by those usages, insofar as they were known to them. For the purpose of administering equal justice to all contractors with the Government, Congress, before overruling a construction of a form of contract, or an act of Congress, settled by the proper executive department, should, as the committee think, be prepared to restore to all contract who have lost by the erroneous construction the amount of said loss. They should also be prepared to apply the construction adopted to all similar unclosed contracts.

These considerations should have no other effect than to induce care and deliberations upon questions of the kind now before the committee; and, if the accounting officers are found to have erred, the error should be corrected without regard to consequences.

The petitioner undertook to transport certain arms, &c., for the United States, from the Washington arsenal, "and safely land them at Fort Moultrie and Castle Pinkney, in the harbor of Charleston, South Carolina, the dangers of the sea and navigation excepted, as designated" in the contract. On the part of the United States, it was stipulated that "every facility shall be furnished for loading and unloading the vessel, and, if necessary, laborers shall be employed to assist the crew for that purpose."

The petitioner contracted to land the cargo at a particular place; to land them, he had to have the service of lighters, and was delayed several days before he procured them. This expense and delay he charges to the United States. The United States were bound to afford facilities, not for getting the cargo to the places of landing, but to unload the vessel. The petitioner was to transport to the places of landing, and the Government was to furnish facilities for unloading, and, if necessary, to employ laborers to assist the crew for that purpose. It would seem that the stipulation to furnish facilities was not considered as extending to the employment of laborers to assist in unloading; wherefore it was expressly provided for, if found to be necessary. It seems to the committee that it would require a very liberal construction of this clause for the petitioner to hold the United States as bound by it to furnish facilities to take the cargo to Fort Moultrie and Castle Pinkney, and, if necessary for that purpose, to furnish lighters. The water was not deep enough for the vessel in which the cargo was to be shipped to turn in. This the petitioner should have known. If he did not know it, it is no ground for relief, unless a fraud was practised upon him by the agent with whom he contracted to put him off his guard by the suppression of a fact or the assertion of a falsehood. An extract from the report of the Third Auditor to the Second Comptroller, on the subject of this claim, as well as the opinion of said Comptroller, are in the following words: "But the charges for lighterage and demurrage I do not consider admissible under the contract transmitted, together with the vouchers and papers, for the decision of the Second Comptroller of the Treasury thereon." "Treasury Department, Third Auditor's office, July 28, 1841. A. K. Paris, Second Comptroller."

"PETER HAGNER, Auditor."

"TREASURY DEPARTMENT,

"Second Comptroller's Office, July 28, 1841.

"The shipowner who undertakes to carry goods to a particular port is

presumed, in law, to understand the situation of such port, and the facilities or difficulties of entering it with his vessel, and discharging the cargo shipped. If, from want of such knowledge, he is subjected to the expense of lighterage or demurrage, he must bear it. The shipper is not, in law, answerable. I concur with the Auditor.

“ALBION K. PARIS, *Comptroller.*”

The committee, upon full consideration, concur in opinion with the Third Auditor and Second Comptroller, and recommend the adoption of the following resolution—supposing that the accounting officers will do justice in respect to the claim for money paid for wharfage and labor:

Resolved, That the prayer of the petitioner ought not to be granted.

The petitioner undertook to transport certain arms, &c., for the United States, from the Washington Arsenal, and safely land them at Fort Moultrie and Castle Pinckney, in the harbor of Charleston, South Carolina, the danger of the sea and navigation excepted, as designated in the contract. On the part of the United States it was stipulated that “every facility shall be furnished for loading and unloading the vessel, and, if necessary, laborers shall be employed to assist the crew for that purpose.” The petitioner contracted to land the cargo at a particular place; and then, he had to have the service of lighters, and was delayed several days before he procured them. This expense and delay he charges to the United States. The United States were bound to afford facilities, not for getting the cargo to the places of landing, but to assist the vessel. The contract was to transport to the places of landing, and the Government was to furnish facilities for unloading, and, if necessary, to employ laborers to assist the crew for that purpose. It would seem that the stipulation to furnish facilities was not considered as extending to the employment of labor to assist in unloading; wherefore it was expressly provided for, it found no necessary. It seems to the committee that it would require a very exact construction of this clause for the petitioner to hold the United States bound by it to furnish facilities to take the cargo to Fort Moultrie and Castle Pinckney, and, if necessary for that purpose, to furnish lighters. The water was not deep enough for the vessel in which the cargo was to be shipped to land. This the petitioner should have known. He did not know it is no ground for relief, unless a fraud was practiced upon him by the agent with whom he contracted to put him off his guard by the suppression of a fact or the assertion of a falsehood. An extract from the report of the Third Auditor to the Second Comptroller, on the subject of this claim, as well as the opinion of said Comptroller, are in the following words: “But the charges for lighterage and demurrage I do not consider admissible under the contract transmitted together with the vouchers and papers, in the decision of the Second Comptroller of the Treasury Department, Third Auditor’s office, July 23, 1841. ALBION K. PARIS, Second Comptroller.”

“PETER HAGNER, Auditor.”

“TREASURY DEPARTMENT.”

“Second Comptroller’s Office, July 23, 1841.”

“The shipowner who undertakes to carry goods to a particular port is